

State of Utah
Administrative Rule Analysis

NOTICE OF PROPOSED RULE

The agency identified below in box 1 provides notice of proposed rule change pursuant to *Utah Code* Sections 63-46a-4. Please address questions regarding information on this notice to the agency. The full text of all rule filings is published in the *Utah State Bulletin* unless excluded because of space constraints. The full text of all rule filings may also be inspected at the Division of Administrative Rules.

DAR file no:		Date filed:	
Utah Admin. Code ref. (R no.):	R156-46b	Time filed:	
Changed to Admin. Code Ref. (R no.):			

1.	Agency:	Commerce/Division of Occupational and Professional Licensing		
	Room no.:			
	Building:	Heber M. Wells Building		
	Street address 1:	160 East 300 South		
	Street address 2:			
	City, state, zip:	Salt Lake City UT 84111-2316		
	Mailing address 1:	PO Box 146741		
	Mailing address 2:			
	City, state, zip:	Salt Lake City UT 84114-6741		
	Contact person(s):			
	Name:	Phone:	Fax:	E-mail:
	Ray Walker	801-530-6256	801-530-6511	raywalker@utah.gov

(Interested persons may inspect this filing at the above address or at DAR between 8:00 a.m. and 5:00 p.m. on business days.)

2.	Title of rule or section (catchline):
	Division Utah Administrative Procedures Act Rules
3.	Type of notice:
	New ____; Amendment XX; Repeal ____; Repeal and Reenact ____
4.	Purpose of the rule or reason for the change:
	The purpose of this rule filing is to update the classification of the Division's adjudicative proceedings under the Utah Administrative Procedures Act (UAPA) to comport with existing agency practices as well as the requirements of UAPA and to make technical amendments.
5.	This change is a response to comments from the Administrative Rules Review Committee.
	Yes ____; No XX
6.	Summary of the rule change:

	<p>Section 103-Authority-Purpose: Updated a statute citation. Section 202-Informal Adjudicative Proceedings: Deleted the following informal adjudicative proceedings initiated by a request for agency action: approval or denial of application to take a licensure examination; disqualification of examination results for cheating on examinations; and request for rescoring of examination. It was determined that these types of proceedings do not constitute independent adjudicative proceedings, but rather merge into a licensure application request for agency action. An informal adjudicative proceeding initiated by a request for agency action was inadvertently deleted from this rule previously, specifically, boards of appeal under Subsection 58-56-8(3) and is being added in this filing. The paragraphs have been renumbered as necessary due to the deletions and addition. Section 403-Evidentiary Hearings in Informal Adjudicative Proceedings: Updated rule sections referenced due to changes made in Section 202 and deleted disqualification of examination results for cheating upon an examination regarding when an evidentiary hearing is held.</p>
7.	<p>Aggregate anticipated cost or savings to:</p> <p>A) State budget:</p> <p>The Division will incur minimal costs, approximately \$40, to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget. Very few of the types of requests for agency action being deleted have ever been received by the Division. When they are received, they will be consolidated into a single adjudicative proceeding. Therefore, the Division anticipates no further costs beyond the printing costs identified above.</p> <p>B) Local government:</p> <p>Proposed amendments do not apply to local governments.</p> <p>C) Other persons:</p> <p>The Division does not anticipate any costs, beyond a normal application fee required to submit an application for licensure, or savings as a result of these proposed amendments. Applicants for licensure would ultimately be required to file an application for licensure and pay the associated application fee regardless in order to obtain licensure. The proposed amendments merely eliminate the opportunity for a person to address in a piecemeal fashion issues associated with qualifications for licensure, in particular herein, the examination component. It does force an applicant to submit an application for licensure to obtain a decision, but this shouldn't be considered an additional cost.</p>
8.	<p>Compliance costs for affected persons ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization or any character other than an agency):</p> <p>The Division does not anticipate any costs, beyond a normal application fee required to submit an application for licensure, as a result of these proposed amendments. Applicants for licensure would ultimately be required to file an application for licensure and pay the associated application fee regardless in order to obtain licensure. The proposed amendments merely eliminate the opportunity for a person to address in a piecemeal fashion issues associated with qualifications for licensure, in particular herein, the examination component. It does force an applicant to submit an application for licensure to obtain a decision, but this shouldn't be considered an additional cost.</p>
9.	<p>Comments by the department head on the fiscal impact the rule may have on businesses:</p> <p>No fiscal impact to businesses is foreseen as a result of this rule filing, which clarifies and simplifies adjudicative proceedings before the Division of Occupational and Professional Licensing. Klarice A. Bachman, Executive Director</p>
10.	<p>This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</p> <p>Subsections 58-1-106(1)(a) and 63-46b-1(6)</p>
11.	<p>This rule adds, updates, or otherwise changes the following titles of materials incorporated by references (a copy of materials incorporated by reference must be submitted to DAR; if none, leave blank):</p>

12.	The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the <i>Utah State Bulletin</i> . See Section 63-46a-5 and Rule R15-1 for more information.)		
	A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy):	11/01/2004	
	B) A public hearing (optional) will be held:		
	on (mm/dd/yyyy):	at (time):	At (place):
13.	This rule change may become effective on (mm/dd/yyyy):		11/02/2004
	NOTE: The date above is the date on which this rule MAY become effective. It is <i>NOT</i> the effective date. After the date designated in Box 12(A) above, the agency <i>must</i> submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.		
14.	Indexing information -- keywords (maximum of four, in lower case, except for acronyms (e.g., "NASA") or proper nouns (e.g., "Medicaid")):		
	administrative proceedings	government hearings	
	occupational licensing		
15.	Attach an RTF document containing the text of this rule change (filename):		R156-46b.pro
To the agency: Information requested on this form is required by Sections 63-46a-4, 5, 6, and 10. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> , and delaying the first possible effective date.			
AGENCY AUTHORIZATION			
Agency head or designee, and title:	J. Craig Jackson, Director	Date (mm/dd/yyyy):	09/02/2004

ProposedRule.doc 9/26/2003

R156. Commerce, Occupational and Professional Licensing.
R156-46b. Division Utah Administrative Procedures Act Rules.
R156-46b-103. Authority - Purpose.

These rules are adopted by the division under the authority of Title 63, Chapter 46b, Subsection 58-1-108(1), and Subsection 58-1-106(1)(a). The purposes of these rules include:

- (a) classifying division adjudicative proceedings;
- (b) clarifying the identity of presiding officers at division adjudicative proceedings; and
- (c) defining procedures for division adjudicative proceedings which are consistent with the requirements of Titles 58 and 63 and Rule R151-46b.

R156-46b-202. Informal Adjudicative Proceedings.

(1) The following adjudicative proceedings initiated by a request for agency action are classified as informal adjudicative proceedings:

~~(a) [approval or denial of application to take a licensure examination];~~

~~—— (b) disqualification of examination results for cheating on examination;~~

~~—— (c) request for rescore of examination;~~

~~—— (d)]approval of application for initial licensure, renewal or reinstatement of licensure, or relicensure;~~

(~~[e]~~b) denial of application for initial licensure or relicensure;

(~~[f]~~c) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(6)(a);

(~~[g]~~d) denial of application for reinstatement of restricted, suspended, or probationary licensure during the term of the restriction, suspension, or probation;

(~~[h]~~e) approval or denial of application for inactive or emeritus licensure status;

(f) board of appeal under Subsection 58-56-8(3);

(~~[i]~~g) approval or denial of claims against the Residence Lien Recovery Fund created under Title 38, Chapter 11, except those in which the claimant is precluded from obtaining the required civil judgment or administrative order against the nonpaying party involved in the claim because the nonpaying party filed bankruptcy;

(~~[j]~~h) payment of approved claims against the Residence Lien Recovery Fund described in Subparagraph (~~[i]~~g);

(~~[k]~~i) approval or denial of request to surrender licensure;

(~~[l]~~j) approval or denial of request for entry into diversion program under Section 58-1-404;

(~~[m]~~k) matters relating to diversion program;

(~~[n]~~l) contested citation hearing held in accordance with Subsection 58-55-503(4)(b);

(~~[o]~~m) approval or denial of request for modification of disciplinary order;

(~~[p]~~n) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as an informal adjudicative proceeding;

(~~[q]~~o) approval or denial of request for correction of procedural or clerical mistakes;

(~~[r]~~p) approval or denial of request for correction of other than procedural or clerical mistakes; and

([§]q) all other requests for agency action permitted by statute or rule governing the Division not specifically classified as formal adjudicative proceedings in Subsection R156-46b-201(1).

(2) The following adjudicative proceedings initiated by a notice of agency action or request for agency action are classified as informal adjudicative proceedings:

(a) disciplinary proceeding seeking exclusively the issuance of a private reprimand;

(b) nondisciplinary proceeding which results in cancellation of licensure;

(c) disciplinary sanctions imposed in a memorandum of understanding with an applicant for licensure; and

(d) termination of diversion agreements.

R156-46b-403. Evidentiary Hearings in Informal Adjudicative Proceedings.

(1) Evidentiary hearings are not required for informal division adjudicative proceedings unless required by statute or rule, or permitted by rule and requested by a party within the time prescribed by rule.

(2) Unless otherwise provided, a request for an evidentiary hearing permitted by rule must be submitted in writing no later than 20 days following the issuance of the notice of agency action if the proceeding was initiated by the division, or together with the request for agency action if the proceeding was not initiated by the division.

(3) Evidentiary hearings are required for the following informal proceedings:

(a) R156-46b-202(1)([§]l), contested citation hearing held in accordance with Subsection 58-55-503(4)(b); and

(b) R156-46b-202(1)([§]f), board of appeal held in accordance with Subsection 58-56-8(3).

(4) Evidentiary hearings are permitted for the following informal proceedings:

(a) ~~[R156-46b-202(1)(b), disqualification of examination results for cheating upon an examination;~~

~~—(b)—~~R156-46b-202(1)([§]k), matters relating to a diversion program; and

([§]b) R156-46b-202(2)(a), issuance of a private reprimand.

(5) Unless otherwise agreed by the parties, no evidentiary hearing shall be held in an informal adjudicative proceeding unless timely notice of the hearing has been served upon the parties as required by Subsection 63-46b-5(1)(d). Timely notice means service of a Notice of Hearing upon all parties not later than ten days prior to any scheduled evidentiary hearing.

(6) Parties shall be permitted to testify, present evidence, and comment on the issues at an evidentiary hearing in a division informal adjudicative proceeding.

**KEY: administrative procedure, government hearings,
occupational licensing**

[~~November 3, 2003~~]2004

Notice of Continuation June 11, 2001

63-46b-1(6)

58-1-106(1)(a)